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DORIS L. SASSOWER,	:
	:
Petitioner,	:
	:
GEORGE SASSOWER, individually and on	: INDEX No.
behalf of the STATE OF NEW YORK and	: 95-109141
the GRAND JURY OF NEW YORK COUNTY,	:
	: Assigned to
Intervenor,	: Hon. HERMAN CAHN
	:
- against -	:
	:
COMMISSION ON JUDICIAL CONDUCT OF THE	:
STATE OF NEW YORK; WILLIAM C. THOMPSON;	:
Hon. DENNIS C. VACCO; Hon. CARL McCALL;	:
Hon. ROBERT MORGANTHAU [sic]; OFFICE	:
OF COURT ADMINISTRATION; ETHICS	:
COMMISSION FOR THE UNIFIED COURT	:
SYSTEM; and THE DEPARTMENTAL	:
DISCIPLINARY COMMITTEE,	:
	:
Respondents.	:
	:
-----X	

Marc Frazier Scholl, an attorney duly admitted to practice law in the courts of this state affirms, under penalties of perjury, that:

1. I am an Assistant District Attorney, of counsel to Robert M. Morgenthau, District Attorney, County of New York, State of New York. I submit this affirmation in connection with what I understand to be a petition and notice of motion, by George Sassower, to intervene into a matter brought by petitioner's wife that is pending before this Court. From the petition and the notice of motion, it appears that Sassower seeks not only to intervene, but, in addition, to add District Attorney Morgenthau as

EX "C"

a respondent and to compel District Attorney Morgenthau to communicate to a grand jury certain allegations by petitioner relating to misconduct in connection with a previously dissolved entity known as Puccini Clothes, Ltd.

2. District Attorney Morgenthau opposes the relief sought by petitioner. First, there is good reason to believe that petitioner's application is an effort to bypass a previously entered injunction enjoining petitioner from filing complaints relating to the dissolution of Puccini Clothes, Ltd. While District Attorney Morgenthau does not have a copy of that injunction, it is cited in a recent federal district court decision in which other, federal bars were imposed on petitioner. In Sassower v. Abrams, 833 F.Supp. 253, 257 (S.D.N.Y. 1993), Judge Peter K. Leisure wrote,

The New York Supreme Court subsequently granted the motion and entered an order permanently enjoining Raffe and Sassower from filing any complaint or proceeding relating to Puccini dissolution in state court. See In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. January 23, 1985)(Exhibit 24); see also In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. March 11, 1986)(Exhibit 25); In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. March 1987)(Exhibit 26); In re Barr, Index No. 01816/80 (N.Y.Sup.Ct., N.Y.Co. September 2, 1988)(Exhibit 27)

3. Second, and, in any event, what petitioner seeks is to control the discretion of a publicly-elected prosecutor in deciding what matters are appropriate to investigate for purposes of

potential prosecution. As set forth in section 190.55(1)(c) of the Criminal Procedure Law, the public prosecutor:

may submit to a grand jury any available evidence concerning an offense prosecutable in the courts of the county, or concerning misconduct, nonfeasance or neglect in public office by a public servant, whether criminal or otherwise

(emphasis supplied).

4. The right to allocate the resources of the prosecutor's office in the manner perceived best by the elected District Attorney of any county is a right necessitated by finite and limited prosecutorial resources. Thus, the public prosecutor is elected to decide how and in what manner to investigate and prosecute claims of wrong-doing. If the public is dissatisfied with the choices made by the public prosecutor in the exercise of his or her discretion, the public will make that dissatisfaction known at the ballot box.

5. It is not for any single, unelected individual to bring an action to compel a prosecutor to exercise discretion in a particular manner. Indeed, forcing a prosecutor to devote resources to one end necessarily means that other investigations and prosecutions will not be pursued. In such instance, it becomes the single, unelected, individual who exercises the discretion and the public in the form of the voters. In short, petitioner has no right to arrogate to himself a privilege to control of the public prosecutor's discretion.

4. Moreover, petitioner's effort is nothing more than an

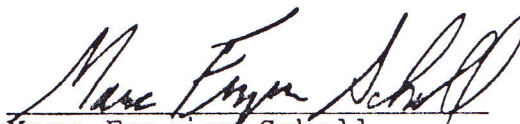
attempt to have the judicial branch of government interfere in the discretionary determinations reserved to the executive branch. The fundamental separation of powers doctrine requires that that effort be rejected.

5. Further, because what petitioner seeks is to control a discretionary act, it is not even clear what jurisdictional basis he has to bring his action. After all, as a proceeding under a theory of mandamus, petitioner can only seek to compel a ministerial act. The fundamental determinations of a public prosecutor over what to present to a grand jury, what investigations to pursue, and how to pursue them simply are not ministerial. Nor is this an action grounded in prohibition since petitioner's theory is that a public prosecutor is not acting as the petitioner would have him or her do, not that the prosecutor is acting in excess of his or her jurisdiction.

6. If the Court desires this response to be in a different form, it is respectfully requested that the Court grant District Attorney Morgenthau a reasonable time to prepare such.

WHEREFORE, it is respectfully requested that the relief requested in the petition be denied.

Dated: New York, New York  
June 23, 1995

  
Marc Frazier Scholl

To: George Sassower  
16 Lake Street  
White Plains, NY 10603

Doris L. Sassower  
283 Soundview Ave.  
White Plains, NY 10606

Dennis Vacco  
Attorney General -- New York State  
Department of Law  
120 Broadway  
New York, NY 10271  
Attn: Amy Abramowitz

Affidavit of Service

State of New York :  
                              : ss.  
County of New York:

VICTOR CERDA, being duly sworn, deposes and says that:

I am not a party to the within action, and I am over eighteen years of age.

On June 23, 1995, I served a copy of this Affirmation on parties and persons below at the addresses below, by

[ ] delivering the copy to said persons listed personally

[ ] delivering the copy to the offices of said persons and leaving it with a suitable person in each office or in a conspicuous place therein

[x] mailing the copy in the United States Mails, in a first-class, postage-paid wrapper, addressed to said persons

George Sassower  
16 Lake Street  
White Plains, NY 10603

Doris L. Sassower  
283 Soundview Ave.  
White Plains, NY 10606

Dennis Vacco  
Attorney General -- New York State  
Department of Law  
120 Broadway  
New York, NY 10271  
Attn: Amy Abramowitz

Sworn to before me  
June 23 . 1995

[Signature]  
Notary Public

Victor Cerda

ALAN GADLIN  
Notary Public, State of New York  
No. 02GA4960172  
Qualified in Kings County  
Commission Expires December 18, 1995

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS Part 49

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the GRAND JURY OF NEW YORK COUNTY,

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SYSTEM; and THE DEPARTMENTAL  
DISCIPLINARY COMMITTEE,

Respondents.

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AFFIRMATION  
95-109141

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District Attorney  
New York County  
One Hogan Place  
New York, New York 10013  
(212) 335-9000

Marc Frazier Scholl  
Assistant District Attorney  
Of Counsel